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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. CHRISTINA DAVALOS, Defendant and Appellant.	2d Crim. No. B213887 (Super. Ct. No. PA051050) (Los Angeles County)

Christina Davalos appeals from an order revoking probation and ordering her to serve a three year state prison sentence that was imposed and suspended in 2007. Appellant claims that the trial court lost jurisdiction under Penal Code section 1203.2a to sentence her and that the probation revocation is based on hearsay evidence.[1] We affirm.

Procedural History

On October 4, 2005, appellant pled no contest to possession of a controlled substance. (Health & Saf. Code, § 11350, subd. (a)) and was granted Proposition 36 drug treatment probation. (§ 1210.1.) Proposition 36 probation was terminated after appellant admitted violating probation. On September 28, 2007, the trial court sentenced appellant to three years state prison, suspended execution of sentence, and granted felony probation.

[1] All statutory references are to the Penal Code unless otherwise specified.

On October 22, 2008, the probation department reported that appellant had been arrested and was in custody on a parole hold. The probation report was received by the trial court on December 2, 2008.

On December 15, 2008, the trial court reviewed the probation report, revoked probation, and issued a bench warrant. Appellant appeared on January 8, 2009 and was remanded to custody.

On January 30, 2009, the trial court found appellant in violation of probation, revoked probation, and ordered appellant to serve the three year state prison sentence previously imposed.

Jurisdiction to Sentence

Appellant argues that the trial court lost jurisdiction to sentence her because the probation department failed to timely advise the court of her prison commitment on the parole matter as required by section 1203.2a. When a defendant released on probation is committed to prison on another offense and requests that sentencing in the case on which she or he is on probation, the trial court must timely revoke probation and sentence the defendant. (§ 1203.2a; *In re Hoddinott* (1996) 12 Cal.4th 992, 999-1000.)

"[S]ection 1203.2a provides for 3 distinct jurisdictional clocks: (1) the probation officer has 30 days from the receipt of written notice of defendant's subsequent commitment within which to notify the probation-granting court [citation]; (2) the court has 30 days from the receipt of a valid, formal request from defendant within which to impose sentence, if sentence has not previously been imposed [citation]; and (3) the court has 60 days from the receipt of notice of the confinement to order execution of sentence (or make other final order) if sentence has previously been imposed [citation]. Failure to comply with any one of these three time limits divests the court of any remaining jurisdiction. [Citation.] " (*Id*., at p. 999.)

The first jurisdictional clock "provides that a probation officer 'must' notify the court of the defendant's imprisonment 'within 30 days after being notified in writing by the defendant or his or her counsel, *or the warden or duly authorized representative of the prison in which the defendant is confined.*" [Citation.]" (*Id*., at p. 1003.)

The October 22, 2008 probation report states that appellant "was taken into custody [on October 3, 2008] by parole. The defendant is currently still in custody on a parole hold under booking number# 1647643." The report does not state that appellant's parole was violated or that appellant was actually committed to state prison. Nor did appellant, her attorney, or a prison warden notify the probation department in writing that appellant was confined in state prison as required by section 1203.2a.

Appellant asserts that the probation report suffices as written notification of a prison confinement because the probation officer, in preparing the report, relied on information from a parole agent. Probation officers are county employees and have no authority to act as a warden or the duly authorized representative of a prison as defined by section 1203.2a. "'Loss of jurisdiction over a convicted felon is a severe sanction which courts have been unwilling to apply unless the sentencing court's jurisdiction has been ousted by strict compliance with the statute. [Citations.]' [Citations.]" (*People v. Hall* (1997) 59 Cal.App.4th 972, 981.)

Appellant asserts that the second paragraph of section 1203.2a provides that the probation officer "may" report the probationer's confinement "upon learning" of the prison confinement from any source.[2] But the failure to report the confinement within 30 days does not oust the trial court of jurisdiction unless the notification was in writing by a person specified in section 1203.2a. (*In re Hoddinott*, *supra*,12 Cal.4th at p. 1005.) "Unless . . . the [probation] officer has received written notice from the probationer, his or her attorney, or the warden or warden's representative, the statute imposes no mandatory duty to report, and the failure to timely do so does not affect the court's jurisdiction to sentence." (*Id*., at p. 1005, fn, 10.)

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[2] The second paragraph of section 1203.2a states: "The probation officer may, upon learning of the defendant's imprisonment, and must within 30 days after being notified in writing by the defendant or his or her counsel, or the warden or duly authorized representative of the prison in which defendant is confined, report such commitment which released him or her on probation."

Section 1203.2a provides that the trial court must order execution of sentence within 60 calendar days "after being notified of the confinement." (*In re Hoddinott, supra* 12 Cal.4th at p. 999.) Although the probation report was received on December 2, 2008, the trial court first became aware of the report on December 15, 2009. Assuming that the 60 day period commenced to run on December 2, 2008, the trial court timely ordered execution of sentence on January 30, 2009, the 59th day. There is no merit to the argument that the trial court lacked jurisdiction to revoke probation and sentence appellant.

Hearsay

Appellant argues that the trial court erred in relying on the probation officer's report, which contains hearsay, to find that appellant violated probation. The October 22 , 2008 probation report lists multiple probation violations: appellant's arrest, the failure "to pay as directed," the failure "to report as directed," that appellant was currently in custody on a parole hold, and that appellant missed eight drug tests.

Appellant did not object to the report and is precluded from arguing that it is hearsay for the first time on appeal. (*People. v. Alvarez* (1996) 14 Cal.4th 155, 186.) A probation report is admissible at a probation revocation hearing where, as here, it was prepared in the furtherance of the probation's officer's duties and bears a substantial degree of trustworthiness. (*People v. Maki* (1985) 39 Cal.3d 707, 714-717; *People v. Cain* (2000) 82 Cal.App.4th 81, 87-88.)

Appellant asserts that her due process rights were violated but the argument is based on the same hearsay claim and was waived by appellant's failure to object. (*People v. Geier* (2007) 41 Cal.4th 555, 610-611; see e.g. *People v Alvarez, supra,* 14 Cal.4th at p. 186.) In *People v. Maki, supra,* 39 Cal.3d 707, our Supreme Court held that the right of confrontation at a probation violation hearing is not absolute and that documentary hearsay (a car rental invoice and hotel receipt) may be considered if it has a reasonable indicia of reliability (*Id*., at p. 709.)

The same principle applies here. Appellant did not claim that the probation report was untrustworthy or request that the probation officer appear and

testify. Where the probation report cites "routine matters such as the making and keeping of probation appointments, restitution and other payments, and similar records of events of which the probation officer is not likely to have personal recollection and as to which the officer would rely instead upon the record of his or her own action," the report may be considered by the trial court. (*People v. Abrams* (2007) 158 Cal.App.4th 396, 405 [probation report and probation department computer records]; see also *People v. O'Connell* (2003) 107 Cal.App.4th 1062, 1066 [report from drug program director].)

Appellant asserts that the probation report is barred by the United States Supreme Court's decision in *Crawford v. Washington* (2004) 541 U.S. 36 [158 L.Ed.2d 177]. *Crawford* held that the Sixth Amendment prohibits the introduction of testimonial hearsay in criminal trials unless the declarant is unavailable at trial and the defendant had a prior opportunity to cross-examine the declarant. (*Id.*, at p. 59 [158 L.Ed.2d at p. 197].)

In probation matters, a probationer's right to confront witnesses stems not from the Sixth Amendment but the due process clause of the Fourteenth Amendment. (See *People v. Johnson* (2004) 121 Cal.App.4th 1409, 1411.) "Thus, *Crawford's* interpretation of the Sixth Amendment does not govern probation revocation proceedings. [Citation.]" (*Ibid.;* see also *People v. Abrams*, *supra*, 158 Cal.App.4th at p. 400, fn. 1.) In dealing with the admissibility of hearsay evidence at probation revocation hearings, our courts have distinguished between traditional documentary evidence such as invoices or receipts, and "testimonial" evidence that serves as a substitute for the live testimony of an adverse witness. (*People v. Arreola* (1994) 7 Cal.4th 1144, 1157.) Documentary hearsay evidence is generally admissible where, as here, it is accompanied by a reasonable indicia of reliability. (*People v. Shephard* (2007) 151 Cal.App.4th 1193, 1200-1201.)

Assuming arguendo that the hearsay and due process arguments were not waived, the alleged error was harmless beyond a reasonable doubt. (*People v. Arreola, supra,* 7 Cal.4th at p. 1161.) Had appellant objected to the probation report, the trial court could have found a violation of probation based on appellant's failure to report and

the commission of a new offense that resulted in appellant's arrest and parole revocation.[3] Affording appellant a new probation revocation hearing would be a futile act because, on remand, the trial court could receive additional evidence that appellant failed to report and failed to submit to drug testing, either of which is grounds for revoking probation probation. (See e.g., *People v. Arreola, supra,* 7 Cal.4th at p. 1162 [new evidence may be considered on remand].)

Substantial Evidence

Appellant finally argues that the violation of probation was not established by a preponderance of the evidence. (See *People v. Rodriguez* (1990) 51 Cal.3d 437, 447.) Section 1203.2, subdivision (a) provides that a trial court may revoke probation where the "court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation . . . ." Because a trial court has broad discretion in determining whether a probationer violated probation, an order revoking probation will be reversed only in an extreme case. (*People v. Rodriguez, supra,* 51 Cal.3d at p. 443.)

Appellant admitted that she failed to report for drug tests but claimed that it was because she was, at all times, in custody on the parole hold. The trial court found that appellant was not continuously in custody which is why the bench warrant issued. "According to L.A. County Sheriffs Records, which I presented to counsel this morning, . . . she was booked in January 7th, 2009. [¶] Now, I don't now when prior to that date she was released by the Department of Correction's hold. I don't know how long she was out of custody before that. But I can say with certainty she was

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[3] Appellant speculates that the arrest was based on a parole violation, not a new offense. The probation report, however, lists the arrest as a separation probation violation and states that the probation officer attempted to contact the parole officer for more information about the arrest. Because the parole hold was placed on October 3, 2008 and parole was not revoked until October 22, 2008, one can infer that the arrest was based on a new criminal charge that was not prosecuted. (See Cal. Code Regs, tit. 15, §§ 2600, 26003 [parole hold must be reviewed by no later than four days].)

not in custody on December 15th when the warrant was issued. At least not in Los Angeles."

We have taken judicial notice of Department of Corrections records which indicate that a parole hold was placed on October 3, 2008, that parole was revoked on October 22, 2008, and that appellant was released by the Department of Corrections on January 7, 2009, after serving 96 days.

The trial court revoked probation based on appellant's "failing to report to probation and failure to submit to antinarcotic testing at a time when she was not in custody, which predates the time that she was in custody for the parole violation." The probation report, which was received into evidence, sets forth the drug test dates that appellant failed to report for: March 7, June 6, July 17, August 5, September 6, and September 15, 2008. Substantial evidence supports the finding that appellant violated probation.

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

Jeffrey Harkavy, Judge

Superior Court County of Los Angeles

Alan Siraco, under appointment by the Court of Appeal, for Defendant and Appellant.

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